

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Randy L. Bertram,)	
)	
Petitioner,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Leann K. Bertsch,)	Case No. 1:08-cv-093
)	
Respondent.)	

Before the Court is Petitioner Randy L. Bertram's Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody filed on November 4, 2008. See Docket No. 1. On January 7, 2009, Respondent Leann K. Bertsch filed a motion to dismiss. See Docket No. 8. On January 27, 2009, Bertram filed a response in opposition to the motion to dismiss. See Docket No. 11. Magistrate Judge Charles S. Miller, Jr. reviewed the pending motions and, on May 26, 2009, submitted a Report and Recommendation. See Docket No. 15. Judge Miller recommended that Bertram's petition be dismissed with prejudice and that Bertsch's motion to dismiss be granted. Judge Miller also recommended that if the petition is dismissed the Court should not issue a certificate of appealability. Bertram was given ten (10) days to file an objection to the Report and Recommendation. Bertram did not file an objection.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the record as a whole, and finds that the Report and Recommendation is persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 15) in its entirety, **DISMISSES WITH PREJUDICE** Bertram's petition (Docket No. 1), and **GRANTS** Bertsch's motion to dismiss (Docket No. 8). Further, the Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court further certifies that Bertram has

failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 16th day of June, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court